

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RMH FRANCHISE CORPORATION
d/b/a APPLEBEE'S RESTAURANT

and

Case 28-CA-145185

HEIDI JOHNSON

**ORDER RESCINDING ORDER APPROVING STIPULATION,
GRANTING MOTION, AND TRANSFERRING PROCEEDING
TO THE BOARD**

This matter came before the National Labor Relations Board pursuant to a Board Order granting a joint motion by the parties to transfer this proceeding directly to the Board for a decision based on the stipulated record. For the reasons that follow, the Board has now decided to rescind its prior Order and to deny the joint motion.

On February 27, 2015, the General Counsel, through the Regional Director for Region 28, issued a complaint alleging that the Respondent has been violating Section 8(a)(1) of the National Labor Relations Act by maintaining a mandatory arbitration policy set forth in the documents entitled "Arbitration Agreement" (the Agreement) and "Employee's Specific Acknowledgement of Applicability of RMH Companies' Dispute Resolution Program and Employment Arbitration Policy" (the Acknowledgement). On May 11, 2015, the parties filed a joint motion to waive a hearing and a decision by an administrative law judge and to transfer this proceeding to the Board for a decision based on a stipulated record. On October 29, 2015, the Board issued an Order Approving Stipulation, Granting Motion, and Transferring Proceeding to

the Board. Pursuant to that Order, the Board transferred the case to the Board for the purpose of issuing findings of fact, conclusions of law, and a Decision and Order, and set a briefing schedule. The parties thereafter filed briefs.

In support of the complaint's allegation that the Respondent unlawfully maintained and enforced its arbitration agreement, the General Counsel relies on the Board's decisions in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), holding that the maintenance and enforcement of an arbitration agreement requiring employees to waive the right to commence or participate in class or collective actions in all forums, whether arbitral or judicial, violates Section 8(a)(1) of the Act.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2018), *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the Act. *Id.* at ___, 138 S. Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. *Id.* at ___, 138 S. Ct. at 1619, 1632.

In light of the Supreme Court's decision in *Epic Systems*, which overrules the Board's holding in *Murphy Oil USA, Inc.*, the Board now rescinds its October 29, 2015 Order and denies the parties' September 30, 2015 joint motion without prejudice.¹

Dated, Washington, D.C., August 7, 2018.

By Direction of the Board:

/s/ Farah Z. Qureshi

Associate Executive Secretary

¹ *Epic Systems* did not affect the separate complaint issue whether the Respondent's arbitration agreement unlawfully restricts employee access to the Board. Having rescinded the Order transferring this proceeding for a decision based on a stipulated record, the Board expresses no opinion with respect to this issue at this time.